

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
8 West 65th Street Corp. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article 22 of the Tax Law for the :
Period 1/1/82-10/31/82. :
:

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 29th day of May, 1985, he served the within notice of Decision by certified mail upon 8 West 65th Street Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

8 West 65th Street Corp.
745 Seventh Ave.
New York, NY 10019

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
29th day of May, 1985.

David Parchuck

James A. Shegelski
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
8 West 65th Street Corp. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article 22 of the Tax Law for the :
Period 1/1/82-10/31/82. :
:

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 29th day of May, 1985, he served the within notice of Decision by certified mail upon Moses S. Rosengarten, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Moses S. Rosengarten
Joseph Korff
689 Fifth Ave., Suite 500
New York, NY 10022

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
29th day of May, 1985.

David Parchuck

Brown O. Heyland
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

May 29, 1985

8 West 65th Street Corp.
745 Seventh Ave.
New York, NY 10019

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Moses S. Rosengarten
Joseph Korff
689 Fifth Ave., Suite 500
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
8 WEST 65TH STREET CORP.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Period January 1, 1982	:	
through October 31, 1982.	:	

Petitioner, 8 West 65th Street Corp., 745 Seventh Avenue, New York, New York 10019, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the period January 1, 1982 through October 31, 1982 (File No. 43804).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 15, 1984 at 9:00 A.M., with all briefs to be submitted by September 14, 1984. Petitioner appeared by Moses S. Rosengarten, Esq. The Audit Division appeared by John P. Dugan, Esq. (Lawrence Newman, Esq., of counsel).

ISSUES

- I. Whether the petition was timely filed.
- II. Whether petitioner's failure to timely file returns and pay withholding taxes was due to reasonable cause and not due to willful neglect.

FINDINGS OF FACT

1. On January 5, 1983, the Audit Division issued ten documents entitled, "Notice and Demand for Payment of New York State and/or New York City Withholding Tax Due" against petitioner detailed as follows:

<u>Period Covered by Withholding Tax Return</u>	<u>Tax Withheld</u>	<u>Penalty</u>	<u>Interest</u>
January 1, 1982 to January 31, 1982	\$ 835.65	\$229.80	\$117.15
February 1, 1982 to February 28, 1982	1,433.02	394.08	184.87
March 1, 1982 to March 31, 1982	1,326.93	358.27	152.03
April 1, 1982 to April 30, 1982	1,467.85	381.64	144.94
May 1, 1982 to May 31, 1982	1,191.75	303.89	102.68
June 1, 1982 to June 30, 1982	1,221.35	305.33	88.17
July 1, 1982 to July 31, 1982	1,571.35	314.27	87.82
August 1, 1982 to August 31, 1982	1,276.70	248.96	55.29
September 1, 1982 to September 30, 1982	1,310.42	190.01	38.45
October 1, 1982 to October 31, 1982	1,576.15	78.81	21.29

2. In mid-December of 1982, petitioner filed, after the expiration of applicable due dates, withholding tax returns for the periods noted in Finding of Fact "1", supra, and paid the personal income taxes which it had withheld from the wages of its employees. It is unclear from the record whether or when the interest was paid. However, petitioner is challenging only the penalties imposed pursuant to Tax Law §685(a)(1) (for failure to timely file returns) and Tax Law §685(a)(2) (for failure to pay the tax due shown on said returns on or before the prescribed date).

3. Petitioner is a real estate development firm engaged in the rehabilitation of housing units. During the period at issue, it employed approximately thirty persons and its major project was the rehabilitation of a Manhattan apartment house and conversion thereof into ten condominium units.¹ Petitioner is owned by two shareholders, James E. Fusco and Robert J. Reveley.

4. Petitioner's controller, Joseph Granucci, contends that penalties should not be imposed against petitioner because (i) its accountant during the

¹ Joseph Granucci testified that a project at 8 West 56th Street was the major activity of petitioner during the period at issue. It is not clear whether he incorrectly noted the address of such project given petitioner's name, 8 West 65th Street Corp.

period at issue suffered "severe personal hardship" and (ii) petitioner suffered setbacks and difficulties in "developing a residential condominium project." Joseph Granucci became petitioner's controller after the period at issue and his testimony was not based upon his personal knowledge. Rather it was based upon conversations he had with James E. Fusco and Robert J. Reveley, who did not testify at the hearing herein. In lieu of testimony, they each submitted an affidavit.

5. Petitioner's petition for a hearing to review the assessment of the penalties at issue was mailed on April 1, 1983.

CONCLUSIONS OF LAW

A. That Tax Law §171, subdivision Twenty-first, provides in part as follows:

"Where the request for a hearing is made by a person seeking review of any taxes determined or claimed to be due under this chapter, the liability of such person shall become finally and irrevocably fixed unless such person, within ninety days from the time such liability is assessed, shall petition the tax commission for a hearing to review such liability."

B. That the date of assessment of the penalties at issue herein was January 5, 1983, which is the date on which the Audit Division issued the ten documents entitled "Notice and Demand for Payment of New York State and/or New York City Withholding Tax Due". The petition mailed on April 1, 1983 was filed within ninety days of the date of assessment and was therefore timely filed.

C. That penalties are imposed for failure to file a return on or before the prescribed date [Tax Law §685(a)(1)] and for failure to pay the tax shown on a return on or before the prescribed date [Tax Law §685(a)(2)], unless it is shown that said failure was due to reasonable cause and not due to willful neglect.

D. That section 689(e) of the Tax Law places the burden of proof on petitioner except in three specifically enumerated instances, none of which are at issue herein. The limited evidence submitted by petitioner does not establish that its failure to timely file returns or its failure to timely pay the tax shown on said returns was due to reasonable cause and not willful neglect.

E. That the petition of 8 West 65th Street Corp. is denied.

DATED: Albany, New York

MAY 29 1985

STATE TAX COMMISSION

Richard A. Clem
PRESIDENT

Francis R. Koony
COMMISSIONER

Mark J. Miller
COMMISSIONER

TA 26 (9-79)

YORK

CLAIM CHECK
NO.

MISSION

BUREAU

US

12227

417835

☐ HOLD

DATE

1ST NOTICE

2ND NOTICE

RETURN

MAILED
JUN 12 1985
FORM 3849-A
JUN 1985

CERTIFIED

P 693 169 904

MAIL

8 West 65th Street Corp.

745 Seventh Ave.

New York, NY 10019



Moved Not Forwarded 5/31